

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2654 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PRADIPBHAI KALIDAS MODI

Versus

POLICE COMMISSIONER, SURAT

Appearance:

1. Special Civil Application No. 2654 of 2004
MR ASHISH M DAGLI for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/07/2004

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 25.12.2003. By the said order, the petitioner is detained as a "bootlegger" under P.A.S.A. Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case pending against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is illegally dealing in foreign liquor and, the quantity of the same is 36 bottles. According to the detaining authority, his activities are required to be curbed by detaining the detenu under the P.A.S.A. as he is a bootlegger. The authority, after considering the said case and after considering the statements of witnesses, detained the petitioner under the prevention detention as a bootlegger. It is the aforesaid order which is under challenge in this petition.

#. Learned counsel for the petitioner submitted that there is one solitary registered criminal case against the petitioner and according to him, therefore, for single criminal case, the detaining authority should not have invoked the preventive detention, as, it cannot be said that the petitioner is guilty of violation of public order. It is submitted by him that even otherwise it cannot be said that the petitioner is a habitual offender or that at the most it is a question regarding violation of law and order and not of public order. Learned counsel for the petitioner has relied upon the judgment rendered in the case of Sandip Omprakash Gupta vs. State of Gujarat, reported in 2004(1) GLR 864. In the said decision, a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court, on the facts of that case, held that the detenu could have been dealt with under the ordinary criminal law and the order of detention passed therein, treating the petitioner as a bootlegger, was set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid stand about a solitary case lodged against the petitioner, which can be taken care under the ordinary criminal law, this petition is required to be allowed.

#. It is not in dispute that there is a solitary case registered against the detenu, therefore, in view of the aforesaid judgment, only on the ground of solitary case, this petition is required to be allowed, as it cannot be said that this is a case of breach of public health or public order.

#. In view of the judgment referred above, the order of detention is required to be set aside on the ground that the breach of public order is not established.

#. For the foregoing reasons, this petition is allowed. The order of detention dated 25.12.2003 is quashed and set aside. The detenu, Pradipbhai Kalidas Modi is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.MAJMUDAR, J)
(pathan)